



United States General Accounting Office
Washington, DC 20548

July 19, 2002

Congressional Committees

Subject: *Department of Defense's Compliance with Statutory Requirements for Funding Military Operations Where Funds Were Not Provided in Advance*

Section 127a of title 10, United States Code, provides the Department of Defense (DOD) with two options for funding nontraining deployments and operations when Congress has not provided funds for these operations in advance. These options involve waiving reimbursements for support services and transferring amounts from other DOD accounts. Section 127a prescribes specific procedures to be followed by DOD when these funding options are used; requires DOD to notify Congress of and report to Congress on certain new contingency operations; and states that the Comptroller General of the United States shall from time to time, and when requested by a committee of Congress, conduct a review to determine whether the Department of Defense is complying with the requirements and limitations of this section. This report responds to that provision. Our objectives were to assess (1) whether DOD complied with the notification and reporting requirements contained in 10 U.S.C. 127a and (2) DOD's use of its funding options.

Results in Brief

DOD has complied with the requirements contained in 10 U.S.C. 127a. Since the current notification and reporting requirements of section 127a were enacted in 1996, DOD has provided congressional notification for four operations, involving Bosnia, Kosovo, hurricane relief in Central America, and East Timor. In each instance, DOD complied with 10 U.S.C. 127a notification and reporting requirements.

DOD has rarely used the funding options provided in section 127a. It used the section 127a funding option allowing waiver of reimbursement for units providing support once, for Bosnia operations in fiscal year 1996, and has never used the option allowing transfer of funds. DOD officials told us the Secretary appreciates having section 127a available to fund future contingency operations, if needed. However, for the most part, DOD has used other options to fund contingency operations such as using funds that were planned to be spent later in a fiscal year and seeking supplemental appropriations.

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Background

Section 127a of title 10, United States Code, provides two funding options for certain operations for which funds are not provided in advance. This section applies to any operation where the incremental costs¹ are expected to exceed \$50 million for which funds had not previously specifically been appropriated or where the incremental costs, when added to the expected incremental costs of the Department's other ongoing operations, will result in cumulative incremental costs of more than \$100 million. The Secretary of Defense is authorized to use these funding options for any operation that involves

- the deployment (other than for a training exercise) of elements of the Armed Forces for a purpose for which funds have not been specifically provided in advance; or
- the provision of humanitarian assistance, disaster relief, or the support of law enforcement where funds have not been specifically provided in advance.

Section 127a requires that the Secretary of Defense designate an operation meeting the criteria specified in the section as a contingency and promptly notify Congress of that designation. The Secretary is then authorized to both waive reimbursements and transfer funds as follows:

- The Secretary shall direct that when a unit participating in an operation described in section 127a receives services from a DOD element that operates through the Defense Business Operating Fund (or a successor fund) that unit may not be required to provide reimbursement.
- Separately, the Secretary may transfer amounts already appropriated to DOD to accounts from which incremental expenses for the operation were incurred in order to reimburse those accounts for the incremental expenses.² The total amount that the Secretary may transfer under the authority of this section in any fiscal year is \$200 million.

Section 127a also requires the Secretary of Defense, within 45 days of identifying an operation as a contingency, to submit to Congress a report describing the operation. The specific information to be included in the Secretary's report includes the

- objectives of the operation,
- estimated duration of the operation,
- estimated incremental cost of the operation, and
- exit criteria for the withdrawal of U.S. forces.

¹ As defined in section 127a, "incremental costs" means those directly attributable costs that would not have been incurred if it were not for the operation.

² Among other restrictions, transfers may only be made from amounts appropriated to DOD for any fiscal year that remain available for obligation, except operation and maintenance appropriations that are specified as being for operating forces (known as a budget activity 1 account) or mobilization (known as a budget activity 2 account).

DOD's Compliance With Notification and Reporting Requirements

Since the current notification and reporting requirements of section 127a were enacted in 1996, DOD has notified Congress of four operations, involving Bosnia; Kosovo; hurricane relief in Central America, called Operation Mitch; and East Timor. In each of these instances, the Secretary of Defense notified Congress in writing that he was designating the operation as a contingency operation pursuant to section 127a. Specifically, the Secretary took the following actions:

- In July 1996, the Secretary designated Operation Joint Endeavor, North Atlantic Treaty Organization (NATO) military operations supporting implementation of the Bosnia peace treaty, as an operation meeting the requirements of section 127a and so notified Congress.
- In March 1999, the Secretary designated Operation Fuerte Apoyo (Strong Support)—operations supporting Hurricane Mitch humanitarian relief and rehabilitation—as an operation meeting the requirements of section 127a and so notified Congress.
- In April 1999, the Secretary designated U.S. participation in and support of NATO military operations in and around Kosovo as an operation meeting the requirements of section 127a and so notified Congress.
- In March 2000, the Secretary designated U.S. participation in and support of Operation Stabilise—the operational name for International Force East Timor—as an operation meeting the requirements of section 127a and so notified Congress.

The Secretary subsequently provided Congress with a written report for each of the above operations that addressed the topics specified in section 127a.

DOD's Use of the Waiver of Reimbursement and Transfer Funding Options

DOD has rarely used the two funding options contained in 10 U.S.C. 127a. We identified one instance in which DOD used the waiver of reimbursement provision of 10 U.S.C. 127a—in support of Bosnia operations in 1996. In that instance, DOD's United States Transportation Command accepted \$77 million in orders from the Army's and the Air Force's operating forces without reimbursement. To make it possible for the Transportation Command to provide these services, it was necessary to transfer Army and Air Force Defense Business Operating Fund cash balances of \$53 million and \$24 million respectively to the Transportation Command's Defense Business Operating Fund activity. We found no instances recorded in DOD's files on section 127a in which DOD used the transfer authority. We were told that DOD considered invoking the section 127a funding options at the start of Operation Enduring Freedom (military operations combating terrorism) in September 2001 but that Congress appropriated funds in advance, thereby negating the requirement for the Secretary to invoke section 127a.

We discussed the infrequent use of section 127a with officials at DOD. Officials within the Office of the Secretary of Defense (Comptroller) told us the Secretary appreciates having section 127a flexibilities available for future contingency

operations, if needed. However, for the most part, DOD has not needed to utilize these flexibilities for contingency operations because it had used funds that were planned to be spent later in a fiscal year and sought supplemental appropriations.

Scope and Methodology

To assess DOD's compliance with the notification and reporting requirements of 10 U.S.C. 127a, we (1) reviewed the section to identify the requirements placed on DOD; (2) reviewed the Department's files, including the notification letters and subsequent reports to Congress; (3) and compared the notifications and reports sent to the Congress with the section's requirements. To assess DOD's use of the funding options contained in section 127a, we further reviewed DOD's files to identify any instances in which the funding options were used and discussed their use with officials from the Office of the Secretary of Defense (Comptroller). We reviewed the information in this letter with DOD officials and made changes where appropriate. We performed our work from May through June 2002 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Chairman and Ranking Minority Members, Senate Committee on Governmental Affairs and House Committee on Government Reform; the Secretary of Defense; the Under Secretary of Defense (Comptroller); and the Director, Office of Management and Budget. Copies of this report will also be made available to others upon request. In addition, this report will be available at no charge on the GAO web site at <http://www.gao.gov>.

If you have any questions regarding this report, please call me on (757) 552-8100. Principal contributors to this report were Steve Sternlieb, Ray S. Carroll, Lester Ward, and Laura Talbott.

Sincerely yours,



Neal P. Curtin
Director, Defense Capabilities and Management

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United States Senate

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